

NATURAL RESOURCES COMMISSION
Information Bulletin #42
AOPA Committee
March 1, 2004

Purpose

The purpose of this information bulletin is to assist with the administration of a committee of the Natural Resources Commission to be known as the "AOPA Committee". The AOPA Committee was established by amendments to 312 IAC 3-1-12 that became effective on June 26, 2003.¹ A copy of section 12, as amended, is attached. These amendments authorized the AOPA Committee to grant final agency relief for matters controlled by IC 4-21.5 (commonly referred to as the "Administrative Orders and Procedures Act" or "AOPA") within IC 4-21.5-3-28 through IC 4-21.5-3-31. Perhaps most prominently, the AOPA Committee would review and act upon objections filed by a party to findings of fact, conclusions of law, and a nonfinal order of an administrative law judge.

The AOPA Committee shall provide a forum that is fully supportive of the legal responsibilities set forth in the Administrative Orders and Procedures Act. These responsibilities must be administered with an understanding of the scientific and technical nature of the Department of Natural Resources, the Historic Preservation Review Board, and their allied boards and agencies.

The AOPA Committee shall take all reasonable measures to assure a process that is transparent and consistent with the Open Door Law. Members shall not violate the prohibitions in AOPA against unlawful ex parte communications.

Appointment

As soon as practicable following the annual election required by IC 14-10-1-5, the Chair of the Natural Resources Commission shall appoint the AOPA Committee and the Chair of the AOPA Committee from the members of the Commission. The AOPA Committee shall consist of not fewer than three (3) persons, and a majority of those appointed constitute a quorum. To the extent practicable, the Chair shall include persons on the AOPA Committee who are licensed to practice law in Indiana. The Chair may supplement or modify the membership of the AOPA Committee, as needed for the efficient conduct of the proceedings, during the course of the year. A member of the AOPA Committee may serve through a designate where a designate is authorized under IC 14-10-1-1. The Chair may serve on the AOPA Committee in a capacity other than as Committee Chair.

The AOPA Committee will sometimes conduct proceedings where a member of the Commission enjoys particular scientific or technical expertise but where the person is not a member of the AOPA Committee. In these instances, the Committee Chair may appoint that person as a special advisor. A special advisor is governed by the requirements of AOPA that pertain to a member of the AOPA Committee, including the prohibition on unlawful ex parte communications.

The Director of the Department of Natural Resources is a member of the Natural Resources Commission and provides invaluable insight and guidance to its policy-making functions, particularly for rule adoption and property management. The AOPA Committee was formed with an understanding, however, that adjudicatory functions present special challenges to the Director. If the Director is to enjoy the full benefits of legal and technical advice from the Department, the Director may become disqualified from serving in an adjudicatory role under AOPA. For this reason, and to prevent any appearance of impropriety, the Director will not serve on the AOPA Committee or as a special advisory to the AOPA Committee.

Division of Hearings

The Division of Hearings shall provide logistical and technical support to the AOPA Committee and to the Committee Chair. These responsibilities include:

- Assistance in the conduct of meetings.
- Assistance with drafting orders and other entries.
- Providing updates with respect to statutory changes and reported decisions that may bear upon the responsibilities of the AOPA Committee.
- Assisting with the organization and presentation of workshops to consider crucial legal issues.
- Performing other duties assigned by the Committee Chair.

Application and Modification

The terms of this information bulletin shall be liberally construed to implement its stated purposes and those of IC 4-21.5 and 312 IAC 3-1. The Division of Hearings shall place the information bulletin on the agenda for periodic review with the initial review not later than December 31, 2006. The Chair or the Committee Chair may cause the information bulletin to be reviewed at any meeting of the Natural Resources Commission.

EFFECTIVE DATE

This information bulletin is effective January 20, 2004.

312 IAC 3-1-12 Relief under IC 4-21.5-3-28 through IC 4-21.5-3-31, including disposition of objections to nonfinal orders of administrative law judge; commission objections committee

Authority: IC 14-10-2-4; IC 4-21.5-3-28

Affected: IC 4-21.5-1-6; IC 4-21.5-3; IC 14-10-1-1; IC 25

Sec. 12. (a) This section governs relief under IC 4-21.5-3-28 through IC 4-21.5-3-31, including the disposition of objections under IC 4-21.5-3-29.

(b) A party who wishes to contest whether objections provide reasonable particularity shall move, in writing, for a more definite statement. The administrative law judge may rule upon a motion filed under this subsection, and any other motion filed subsequent to the entry of the nonfinal order by the administrative law judge, and enter an appropriate order (including removal of an item from the commission agenda).

(c) If objections are timely filed, the objections shall be scheduled for argument before the commission committee established by subsection (d), simultaneously with the presentation by the administrative law judge of findings, conclusions, and a nonfinal order. Unless otherwise ordered by the commission committee, argument shall not exceed ten (10) minutes for each party and twenty (20) minutes for each side.

(d) For the review of objections, and to consider any other appropriate relief under IC 4-21.5-3-28 through IC 4-21.5-3-31, the chair of the commission shall appoint a committee consisting of at least three (3) members of the commission. To the extent practicable, the chair shall include persons on the committee who are licensed to practice law in Indiana. The chair shall announce the members of the committee during the first meeting of the commission held in a calendar year. The chair may supplement or modify the membership of the committee, as needed for the efficient conduct of the proceedings, during the course of the year. A member of the committee may serve through a designate where a designate is authorized under IC 14-10-1-1. A final determination by the committee is a final agency action of the commission under IC 4-21.5-1-6.

(e) At least ten (10) days before oral argument is scheduled on objections filed under subsection (c), a nonparty may file a brief with the commission committee. A copy of the brief must be served upon each party. The brief must not be more than five (5) pages long and cannot include evidentiary matters outside the record. Unless otherwise ordered by the commission committee, a nonparty may also present oral argument for not more than five (5) minutes in support of the brief. If more than one (1) nonparty files a brief, the administrative law judge shall order the consolidation of briefs if reasonably necessary to avoid injustice to a party. A nonparty who has not filed a brief at least ten (10) days before oral argument is first scheduled on objections may participate in the argument upon the stipulation of the parties.

(f) Upon the written request of a party filed at least forty-eight (48) hours before an oral argument to consider objections, the commission committee shall provide the services of a stenographer or court reporter to record the argument.

(g) If objections are not filed, the secretary of the commission may affirm the findings and nonfinal order. The secretary has exclusive jurisdiction to affirm, remand, or submit to the commission for final action, any findings and nonfinal order subject to this subsection. No oral argument will be conducted under this subsection unless ordered by the secretary.

(h) A party may move to strike all or any part of objections, a brief by a nonparty, or another pleading under this section that the party believes does not comply with this section. The administrative law judge shall act upon a motion filed under this subsection by providing relief that is consistent with IC 4-21.5 and this rule. (*Natural Resources Commission; 312 IAC 3-1-12; filed Feb 5, 1996; 4:00 p.m.: 19 IR 1320; filed Oct 19, 1998, 10:12 a.m.: 22 IR 749; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 27, 2003, 12:30 p.m.: 26 IR 3323*)

¹ A copy of 312 IAC 3-1-12 is attached for the convenience of the Natural Resources Commission.
